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APPLIED ELASTOMERICS, INCORPORATED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

APPLIED ELASTOMERICS,
INCORPORATED, a California corporation,

Plaintiff/
Counter-Defendant,

v.

Z-MAN FISHING PRODUCTS,
INCORPORATED, a South Carolina
corporation,

Defendant/
Counter-Complainant.

Case No. C06-02469 CW

**STIPULATION REGARDING CASE
RESOLUTION AND JUDGMENT**

[Hon. Claudia Wilken]

Action Filed: April 16, 2006

Trial Date: November 13, 2007

1 Plaintiff and Counter-Defendant Applied Elastomerics, Incorporated (“AEI”) and
2 Defendant and Counter-Complainant Z-Man Fishing Products, Incorporated (“Z-Man”),
3 collectively referred to herein as “the Parties,” through their respective attorneys of record, submit
4 this stipulation and proposed order.

5 WHEREAS the Court issued its September 25, 2007 Order Granting Plaintiff’s Motion
6 for Summary Judgment and Granting Defendant’s Motion for Partial Summary Judgment (the
7 “September 25, 2007 Order”);

8 WHEREAS in the September 25, 2007 Order, the Court concluded that the parties entered
9 into the License Agreement attached as Exhibit A to the Complaint (the “License Agreement”)
10 and that the schedule of minimum payments required to be made by Z-Man pursuant to the
11 License Agreement is that which is set forth in the License Agreement itself;

12 WHEREAS Z-Man disagrees with the Court’s decision on AEI’s motion for summary
13 judgment and, as it is the law of the case, contends that the September 25, 2007 Order precludes it
14 from advancing most of its defense to AEI’s claims;

15 WHEREAS, in light of the Court’s September 25, 2007 Order, the parties believe that the
16 trial of this matter can be avoided by way of this stipulation; and

17 WHEREAS, the parties are scheduled to participate in a private mediation before Martin
18 Quinn on October 30, 2007.

19 IT IS HEREBY STIPULATED between AEI and Z-Man as follows:

- 20 1. Z-Man withdraws its affirmative defenses to AEI’s Complaint;
- 21 2. Z-Man dismisses with prejudice its sole surviving counter-claim for breach of the
22 implied covenant (AEI’s affirmative defenses are therefore moot);
- 23 3. AEI dismisses without prejudice its claim for breach of the implied covenant of
24 good faith and fair dealing. To the extent that the matter is returned to this Court following any
25 successful appeal by Z-Man on the issues described in paragraph 6 below, AEI shall be entitled to
26 reassert that claim in any proceedings moving forward in this Court.

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1 4. Judgment shall be entered against Z-Man and in AEI's favor on AEI's breach of
2 contract claim on or after, but not before, November 13, 2007. That Judgment shall set forth
3 AEI's damages (consisting of past due minimum royalties owed under the License Agreement
4 and interest accrued on the past due amount through November 13, 2007) in the amount of
5 \$1,522,807;

6 5. The November 6, 2007 pretrial hearing and the November 13, 2007 trial are
7 vacated;

8 6. Z-Man reserves its right to appeal the Court's ruling as to its offset claim and the
9 issue of contract formation including its unjust enrichment claim and the issue of the applicable
10 minimum royalty schedule, if any, and AEI reserves its right to appeal the issue of attorney's fees,
11 all of which were decided in the Court's September 25, 2007 Order. Z-Man and AEI hereby
12 expressly waive their right to appeal any other rulings in this case;

13 7. To the extent that Z-Man files an appeal or cross-appeal and wishes to stay any
14 enforcement on AEI's Judgment past the initial ten-day automatic stay period following the filing
15 of its Notice of Appeal or Notice of Cross-Appeal, it can submit to the Clerk of the Court either
16 an irrevocable letter of credit or a supersedeas bond in the amount of \$2,352,000; and
17 Nothing in this stipulation shall survive in the event the parties resolve their dispute before any
18 Judgment is otherwise entered pursuant to this stipulation.

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1 Dated: October 18, 2007

MORRISON & FOERSTER LLP

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3 By: /s/ Jennifer Lee Taylor
4 Jennifer Lee Taylor

5 Attorneys for Plaintiff/Counterclaimant
6 APPLIED ELASTOMERICS,
7 INCORPORATED

8 Dated: October 18, 2007


DILLINGHAM & MURPHY, LLP

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10 By: /s/ Mark J. Rogers
11 Mark J. Rogers

12 Attorneys for Defendant/Cross-Complainant
13 Z-MAN FISHING PRODUCTS, INC.

14 IT IS SO ORDERED.

15 Dated: 10/25
16 _____, 2007

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19 United States District Judge
20 Honorable Claudia Wilken
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